

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

EUGENE and ELLEN KARPINSKY,

Debtors.

Case No. 05-70630
Chapter 13
Hon. Marci B. McIvor

OPINION GRANTING IN PART AND DENYING IN PART DEBTORS'
OBJECTIONS TO DIRECTV'S PROOF OF CLAIM

On December 1, 2003, Debtor Eugene Karpinsky filed a petition for relief under Chapter 7 of the Bankruptcy Code (*In re Eugene and Ellen Karpinsky*, Case No. 03-73436)(Bankr. E.D. Mich.)(the Chapter 7 case). On March 3, 2004, DirecTV filed an adversary complaint against Debtor Eugene Karpinsky alleging several causes of action for satellite signal piracy and requesting that any debt arising from the alleged piracy be declared non-dischargeable (*DirecTV v. Eugene Karpinsky*, Adv. No. 04-4256 (Bankr. E.D. Mich.)(the Adversary).

On August 16, 2005, after two days of trial, the Court entered judgment in favor of DirecTV in the Adversary in the amount of \$202,000 on various counts relating to the satellite signal piracy claims, plus attorney fees under 47 U.S.C. § 605(e)(3)(B)(ii) and finding the entire debt to be non-dischargeable. With respect to attorney fees, the Opinion states in pertinent part:

This Court awards DIRECTV reasonable attorney's fees and costs under 47 U.S.C. § 605(e)(3)(B)(ii). DIRECTV shall file a Fee Application within 30 days of the entry of this Opinion and Order. If Defendant objects to the Fee Application, the Court shall schedule a hearing to determine the appropriate

fee award.

DirecTV v. Karpinsky, 328 B.R. 516, 528 (Bankr. E.D. Mich. 2005).

On September 15, 2005, DirecTV filed its Application for Attorney Fees requesting \$178,510.25 for attorney fees: \$70,205.30 for the services of Yarmuth Wilsdon and Calfo PLLC, and \$108,304.75 for the services of Honigman Miller Schwartz and Cohn LLP. On September 16, 2005, Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code. On November 9, 2005, DirecTV filed a proof of claim for \$380,510.25: \$202,000 for the judgment and \$178,510.25 for DirecTV's attorney fees. On December 9, 2005, Debtor filed an Objection to the Claim of DirecTV. The Objection disputes only the portion of DirecTV's claim which relates to attorney fees.

ANALYSIS/CONCLUSION

Pursuant to 47 U.S.C. § 605(e)(3)(B)(iii), the Court "shall direct the recovery of full costs, including awarding reasonable attorneys' fees to any aggrieved party." "A reasonable fee is one that is adequate to attract competent counsel, but. . .[does] not produce windfalls to attorneys." *Reed v. Rhodes*, 179 F.3d 453, 471 (6th Cir. 1999). In determining what constitutes a reasonable fee, the Court must first calculate the "lodestar" amount by multiplying the number of hours reasonably expended times a reasonable hourly rate. *Id.* "This calculation provides an objective basis on which to make an initial estimate of the value of the lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The Court may then adjust the fee in light of the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Those factors include:

1. the time and labor required;
2. the novelty and difficulty of the questions;
3. the skill requisite to perform the legal service;
4. the preclusion of other employment by the attorney due to acceptance of the case;
5. the customary fee;
6. whether the fee is fixed or contingent;
7. time limitations imposed by the client or the circumstances;
8. the amount involved and the results obtained;
9. the experience, reputation, and ability of the attorneys
10. the “undesirability” of the case;
11. the nature and length of the professional relationship with the client;
12. awards in similar cases

Johnson, 488 F.2d at 717-719. See also *Paschal v. Flagstar Bank, FSB*, 297 F.3d 431, 435 (6th Cir. 2002). While Plaintiff is by statute entitled to an award of reasonable attorney fees, the determination of the fee amount is left to the court's discretion. *DirecTV, Inc. v. Huynh*, 318 F. Supp.2d 1122, 1130 (M.D. Ala. 2004) citing *Dowdell v. City of Apopka*, 698 F.2d 1181, 1187 (11th Cir. 1983).

This Court finds the *Huynh* case particularly helpful because, like the case at bar, it is a satellite piracy case brought by DirecTV and it addresses reasonable attorney fees. In *Huynh*, plaintiff DirecTV, in a motion for default judgment, requested fees in the amount of \$4,400.00. In reviewing the fees, the court stated:

The court finds three [*Johnson*] factors particularly relevant here. First, this case presented no particularly complicated legal issues. See *DIRECTV, Inc. v. Hamilton*, 215 F.R.D. 460, 463 (S.D.N.Y.2003) (Marrero, J.) (reducing DIRECTV's request for \$11,245.12 in attorneys' fees to \$ 1,500.00 because "these types of cases are routine, straightforward and do not require extensive research"). Second, DIRECTV's attorneys in this case are handling a large number of cases practically identical to this one; thus, it is not unreasonable to expect some economy of scale. Further, DIRECTV has brought cases nearly identical to the present case all over the country, giving its attorneys a large pool of experience from which to draw. Third, the amount that DIRECTV's attorneys have requested is more than three times the

highest award of attorneys' fees the court could find in similar cases brought by DIRECTV. See *DIRECTV, Inc. v. Lackey*, NO. CIV.A. 1:02-CV-181-C, 2004 WL 42254, *1 (N.D.Tex. Jan. 4, 2004) (Cummings, J.) (awarding \$ 1,612.70 in attorneys' fees in case decided at summary judgment stage). The court is aware that DIRECTV's attorneys have had to appear at a number of hearings on this matter; however, the bulk of the fee request--as itemized in the invoice submitted by DIRECTV's attorneys--is for time spent on researching and writing the motion for default judgment. The court thus finds that DIRECTV's attorneys' fee request is not reasonable but that an award of \$ 1,500 in attorneys's fees is reasonable. See *Hamilton*, 215 F.R.D. at 463. Accordingly, default judgment in that amount will be entered.

Huynh, 318 F.Supp. 2d at 1130. The Court also finds *In re Carrera*, 2005 WL 2347350 (W.D. Va. 2005) helpful. In that case, the court reduced the attorney fees sought by DirecTV from \$118,497 to \$36,962, notwithstanding the defendant's stated goal of making the case as expensive as possible for plaintiff DirecTV. The court applied the *Johnson* factors and concluded that

the six figure bill submitted for approval in this case appears grossly out of proportion to most of the *Johnson* factors. The time and effort appear to dwarf the factual and legal issues involved in a case where the pleadings and legal issues mirror those filed by the same client in courts around the country and this district.

In re Carrera, 2005 WL 2347350, *3.

In reviewing the *Johnson* factors as applied to the present case, this Court agrees with the *Huynh* court that one of the most important factors in analyzing the reasonableness of fees is the novelty and difficulty of the legal questions presented. Unlike *Huynh*, the present case went to trial, resulting in substantially higher fees than were incurred in *Huynh*'s default judgment. Nevertheless, this case presented no new legal issues for DirecTV. DirecTV's attorneys have handled, and are handling, a large number

of cases which are practically identical to this one. Therefore, it is not unreasonable to expect some economies of scale. DirecTV has prosecuted satellite piracy cases all over the country, giving its attorneys a large pool of experience and pleadings from which to draw. Given that this case presented the same legal issues as the large number of other cases brought by DirecTV, \$178,510.25 in legal fees is excessive.

Another factor to be considered by the court is the amount involved and the results obtained. The statute under which DirecTV sued, 47 U.S.C. § 605, authorized either statutory damages or actual damages. The testimony at trial showed that the actual damages suffered by DirecTV were only \$12,000.00. Because of the egregious nature of Debtor's conduct, however, the court awarded DirecTV the *maximum statutory amount for each violation of the statute*. DirecTV was awarded statutory damages in the amount of \$202,000.00 plus "reasonable attorney fees". See *DirecTV, Inc. v. Karpinsky (In re Karpinsky)*, 328 B.R. 516 (Bankr. E.D. Mich. 2005). In addition, the Court ruled that the entire amount of the judgment was nondischargeable. Given that the Court has already imposed the maximum statutory sanction on Debtor, and DirecTV has obtained a nondischargeable judgment which exceeds DirecTV's actual damages by \$190,000, it is patently unreasonable for DirecTV to seek an additional \$178,000 in attorney fees.

Finally, in reviewing the reported cases under this statute, the Court finds little support for the contention that statutory attorney fees awarded to a prevailing party under § 605 are reasonable where the amount sought is approximately ninety percent of actual damages awarded. See *DirecTV, Inc. v. Carrera*, 2005 WL 2347350 (W.D. Va. 2005)(in

reviewing published *DirecTV* decisions, attorney fees “range from roughly \$300 to \$5,000”). Statutes which award attorney fees to the prevailing party are an exception to the “American rule” which requires each party to bear their own costs of litigation. (See *Alyeska Pipeline Serv. Co. v. Wilderness Society*, 421 U.S. 240 (1975), for extensive discussion of the American rule.) The Court recognizes that in some contexts, such as vindicating a plaintiff’s constitutional rights, statutory attorney fees may exceed monetary damages recovered. See e.g. *Dowdell v City of Apoka*, 698 F2d 118 (11th Cir.1983); *Blanchard v Bergerson*, 489 U.S. 87 (1989). However, the present case presents no such issues. Here, DirecTV sued for money damages and injunctive relief under 47 U.S.C. § 605(e). It prevailed and obtained the maximum statutory damage award. It is this Court’s view that when statutory fees are awarded to a prevailing party under 47 U.S.C. § 605, the fees must be reasonably related to the result obtained. In the present case, it is not reasonable to award DirecTV attorney fees in the amount of \$178,510.25 in addition to the \$202,000 in damages already awarded.

Having reviewed the file, the pleadings, the Court’s prior rulings and Counsels’ detailed request for fees, the Court finds that on the facts of this case, DirecTV is awarded total fees in the amount of \$60,600 (30% of fees requested). Debtors’ Objection to DirecTV’s claim is granted to the extent that DirecTV’s total allowed claim is reduced from \$380,510.25 to \$262,600.

Entered: March 10, 2006

/s/ Marci B. McIvor
Marci B. McIvor
United States Bankruptcy Judge